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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) DLH1.PAU.03
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.13]		Application Number 10/027,369
		Filed 12/20/2001
on _____ on <u>June 14, 2006</u>	First Named Inventor <u>David L. Henty</u>	
Signature <u></u>	Art Unit 9652	
Typed or printed name <u>Brooks D. Hall</u>	Examiner Srilakshmi K. Kumar	

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.

Registration number

attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34:



Signature

Signature

David L. Henty

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6-14-0

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

It is respectfully submitted that the Examiner's rejections are all premised on incorrect interpretations of one or more of the cited references on which the Examiner based the final Office Action. Therefore, the Examiner has failed to establish a *prima facie* basis for the rejections and proceeding with the Appeal is unnecessary and inappropriate. Also, the errors in interpreting the references constitute clear factual error and are appropriate for review under the pre-appeal brief review process. In accordance with the guidelines for the pre-appeal brief procedure the following will focus on these specific issues of factual error, without waiver of numerous additional arguments which Applicant reserves for the Appeal should it be necessary.

1. The Examiner has Misinterpreted the Maynard Reference

For brevity and consistent with the guidelines for the present pre-appeal brief review procedure Applicant refers to the application as filed for a discussion of the claimed invention. The rejection of all independent claims is based on a combination of two references, Loving and Maynard. The Loving reference was discussed in Applicant's response to the previous Office Action and Applicant overcame the rejection over Loving by clarifying that Loving employs RFID tags integrated into a keyboard of a remote control whereas the claimed invention includes a separate and independently movable RFID tag. Applicant amended the claims to clarify this difference. In the next (Final) action the Examiner cited a new reference Maynard as teaching an independently movable tag and stated that it would be obvious to combine Maynard with Loving. Specifically the Examiner stated that it would be desirable to incorporate an independently movable tag as taught by Maynard with the keyboard of Loving to allow reuse of the tag (citing Maynard col. 1, lines 34-49—Office Action at page 2, paragraph 2).

It is respectfully submitted the Examiner's interpretation of Maynard is clearly incorrect. Maynard is directed to use of RFID tags which are attached to computer equipment and used to prevent theft. Although Maynard states the tags can be mounted in the equipment before or after manufacture he makes it clear that the tag must be able to integrate and secure the "asset" (e.g., col. 1, lines 29-30; col. 2, lines 10-11). The only stated basis for the Examiner's interpretation of Maynard as teaching an independently movable tag is the mention of "retrofitting" assets with tags (col. 1, lines 38-40; col. 6, lines 61-65) and such retrofitting is specifically stated as the motivation for the combination (Office Action at page 2, paragraph 2, last sentence). However, retrofitting typically implies a significant structural change to a product and strongly suggests the tag is to be affixed to the asset. This term certainly does not imply that the tag is independently movable. Therefore, the Examiner's assertion does not have support in the reference. Also, the Examiner stated that Maynard teaches removing and reusing tags after being used to secure an asset (Office Action at page 2, paragraph 2, last sentence, citing Maynard, col. 1, lines 34-49). That is not the case, however, and the cited portion of Maynard makes no such statement.

Therefore, contrary to the Examiner's interpretation Maynard's teachings are not directed to an independently movable tag as claimed and the Examiner's strained interpretation and the motivation for the combination is clearly based solely on an attempt at hindsight reconstruction.

2. The Examiner has Misinterpreted the Loving Reference

The Examiner has also made a clear factual error in interpreting the Loving reference for several of the rejections. In particular, in rejecting Claims 11 and 13 the Examiner combined two different portions of Loving as a single teaching. However, Loving actually presents these teachings as being contrary; one associated with conventional applications of RFID tags (col. 1, lines 42-60) and

the other the very different teachings of the patent (col. 3, lines 5-10). The asserted combined teaching in a single product is nowhere to be found in Loving contrary to the Examiner's interpretation and only comes from hindsight. Also, in rejecting Claim 23 the Examiner has asserted a teaching in Loving which is not present in the reference at all.

3. The Examiner has Misinterpreted the Teachings Motivating Combining Loving, Maynard and Hartsell, Jr.

In rejecting Claim 12 the Examiner stated that it would be obvious to incorporate the smart card of the gas station transaction system of Hartsell, Jr. with the remote control of Loving. (Office Action, page 5, paragraph 3, last sentence.) It is respectfully submitted that this statement of the suggestion for combination is clearly flawed on its face. The same reasoning was applied to Claim 3 (Office Action, page 8-9,paragraph 5.)

4. The Examiner has Misinterpreted Peng

The Examiner relied on the combination of Loving, Maynard and Peng in rejecting Claims 1, 2 and 4-9 (Office Action, paragraph 4.) The Loving reference employs an interrogating field from a reader and an RFID circuit in a remote control. The Examiner stated that Peng discloses a wireless mouse having RFID circuitry and concluded it would be obvious to combine Peng and Loving. However, Peng does not employ RFID circuitry nor an interrogating field. Therefore, the motivation for this combination is fundamentally flawed.

5. Conclusion

Due to the flawed interpretation of the references and the inconsistent nature of the proposed combinations it is respectfully submitted the final rejection is flawed on factual grounds and these issues are not appropriate for consideration by the

Board of Appeals. Accordingly, it is respectfully requested that the final rejection be withdrawn and the application allowed.

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read "David L. Henty".

David L. Henty

APPLICANT